

RAB 95-001

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LR  
8-18-98

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Belgard, R.  
Serial No.: 08/458,479  
Filed: 6/2/95  
For: *Address Translation Method and Mechanism Using Physical Address Information Including During A Segmentation Process*

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Art Unit: 2303

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Request for Reconsideration of IDS NOV

PETITION FOR WITHDRAWAL FROM ISSUE (37 CFR 1.313) AND FOR  
CONSIDERATION OF IDS STATEMENT (37 CFR 1.97D)

Applicant hereby petitions for the withdrawal of this application from issue.

The issue fee for this case has NOT been paid, but is expected to be paid on the due date of 12/12/97.

## REASONS FOR WITHDRAWAL REQUEST

The reasons for the request for withdrawal from issue pursuant to 37 C.F.R. 1.313[a] are as follows:

Applicant received a final Office Action in this case dated June 6, 1997, indicating the allowability of certain claims. On that basis, applicant submitted an Amendment on or about August 4, 1997 conforming the claims to the Examiner's request and placing the application in a condition for allowance. With such amendment applicant also enclosed an information disclosure statement (IDS) and explained in detail why the claims were distinguishable over the newly discovered references listed in such IDS.

Applicant then received a Notice of Allowance on or about September 17, 1997 (mailed from the PTO September 12, 1997) confirming the allowance of the claims at issue, but also

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indicating that applicant's most recent IDS and references submitted in August had not been considered because a petition and fee had not been provided along with such items. On September 19<sup>th</sup>, two days after receiving such notification from the Examiner, applicant's undersigned attorney contacted and spoke with Examiner Nguyen about the best procedure for having the IDS considered at the earliest possible opportunity, and certainly before the patent issued in any event. At the conclusion of the discussion the undersigned indicated that an appropriate rule 1.97[d] petition and fee would be prepared and mailed shortly after his return to the U.S. as he was overseas on business at that time, and could not provide such items until that time.

Because applicant intended and desired for this issue to be resolved quickly, and to avoid any last minute time pressures, the undersigned prepared an appropriate petition and submitted the fees on September 22, 1997, almost three months ago. A copy of this petition is attached as Exhibit A. While applicant did not receive a filing receipt back from the Office of Petitions, applicant did receive his cancelled check back for the petition fees, a copy of which is attached hereto as Exhibit B.

Out of an abundance of caution, and because this was a matter of some urgency, applicant also spoke and alerted the Examiner on September 22<sup>nd</sup> to the fact that the petition had been filed, and even faxed a copy of the same to the Examiner to facilitate the review of the same. A copy of this transmission to the Examiner is attached as Exhibit C (to avoid duplicative paperwork another copy of the petition has not been attached).

In early November, after not hearing from the PTO or the Examiner concerning the rule 1.97[d] Petition, applicant's attorney first called the Office of Petitions to determine the status of the same. The undersigned was informed categorically that they had no record of the petition, but that because it was not under their jurisdiction, the undersigned should contact the Examiner instead.

Applicant's attorney then began calling the Examiner on a regular basis for the first two weeks of November to determine the status of the case. While he was unable to reach the Examiner in person, he left numerous messages over the course of more than two weeks in the hopes of getting a response. Finally, on or about November 18<sup>th</sup>, 1997, applicant's attorney finally was able to reach Examiner Nguyen, and was told that the Examiner had not received the submitted petition. Applicant offered to provide yet another copy to the Examiner and any other person responsible for handling this petition, and did so in fact on this date by facsimile. A copy of the cover page for this fax is attached as Exhibit D (again, to avoid excessive paperwork this additional copy of the petition

has not been attached).

After talking with the Examiner again later that day, however, the undersigned was told that since there was no record of the original Rule 1.97[d] petition fee having been paid, the Examiner would need confirmation of this fact before he could begin work on the petition. Since at this point several months had passed away with no action, and because time was drawing short for applicant to pay the issue fee, Applicant asked the Examiner if it would be satisfactory if the Petitions Office simply notified him directly that the fee had been paid to avoid additional delays. The Examiner indicated that this was acceptable, and on this basis, the undersigned prepared a letter to the Petitions Office enclosing yet another Rule 1.97[d] petition fee so that action could be taken promptly in light of the approaching deadline. A copy of this letter is attached as Exhibit E, and such letter was both mailed and faxed on November 18<sup>th</sup>, 1997.

Confirmation of the receipt of the aforementioned transmittal letter, and the accompanying fee, was received by applicant on or about November 21. A copy of this receipt is attached as Exhibit F. During the next two weeks, including the weeks of November 24<sup>th</sup> and December 1<sup>st</sup>, applicant's attorney made numerous unsuccessful inquiries to the PTO to determine the status of the case. On Friday, December 5, Examiner Nguyen left a message on the undersigned's answering machine indicating that he had the rule 1.97[d] petition, but that he did not have the file in his possession to be able to resolve the issues presented. This information, however, was contrary to what was told to the undersigned by the Petitions Office on December 8<sup>th</sup>; their records now apparently reflect the fact the file has been released to the Examiner back on November 21<sup>st</sup>.

After several phone calls and discussions with the PTO this week, Applicant's attorney was notified by Mr. Ed Chan of the PTO on Wednesday, December 10<sup>th</sup>, 1997 that the present application is actually not with Examiner Nguyen, and cannot be found at this time. He also indicated that an official search may be needed to locate the same, and Examiner Nguyen has confirmed this fact again on Thursday, December 11<sup>th</sup>.

Mr. Chan and the Examiner in this case (Mr. Than Nguyen) have indicated that they need access to the file in order to determine the merits of the Rule 1.97[d] petition filed by applicant (on September 22<sup>nd</sup>, 1997) considered before the application is issued. As the time for paying the issue fee expires tomorrow, applicants do not want the application to go abandoned, or for the application to issue without a consideration first of the art submitted in the IDS. For this reason, applicant respectfully requests that the present application be withdrawn from issue (and/or that the

prior Notice of Allowance be withdrawn as the situation may call for) for a period sufficient for the appropriate personnel in the PTO to consider applicant's earlier petition, and issue a supplemental Notice of Allowance. Applicant submits that the application is entitled to and should receive the full benefit of the Examiner's review in light of all known potentially relevant references, and on this basis requests that the case be withdrawn so that such consideration can be given by the Examiner.

**REASON FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENT**

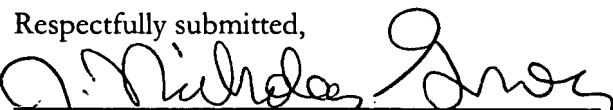
Should the petition for withdrawal of the notice of allowance be granted, the applicant also again requests timely consideration of the Petition For Consideration of Information Disclosure Statement filed on September 22, 1997 pursuant to 37 C.F.R. 1.97 [d] for the reasons set forth therein. A copy of this petition is attached hereto as Exhibit B as noted above. As the petition adequately complies with the requirements of Rule 1.97[d] and was filed well within the time period provided by the rules, the undersigned submits that it should be granted, and that a new Notice of Allowance should be issued by the PTO confirming the allowance of the claims over such references.

**PETITION FEES**

The fee for this petition (under 1.17(p)) is enclosed in the sum of \$130. This fee is enclosed without waiver of applicant's rights to seek reimbursement of the same later as it is applicant's contention that the present petition was necessitated by actions (and omissions) of the PTO rather than the fault of the applicant. The fee for the Rule 1.97[d] petition has already been paid (twice in fact) as noted above.

Respectfully submitted,

Date: December 12, 1997



J. Nicholas Gross, Attorney, Reg. No. 34,175  
Law+  
10950 N. Blaney Suite B Cupertino, CA 95014

*I hereby certify that the foregoing is being deposited with the U.S. Postal Service, Express Mail, to the above mentioned address, this 12<sup>th</sup> of December, 1997.*